

Timothy J. Hogan

From: Damian Capozzola [dcaپozzola@kirkland.com]
Sent: Monday, February 06, 2006 5:24 PM
To: Timothy J. Hogan; Brenda; Eric Liebeler (E-mail); Lex; Lex Smith; Lyle; Lyle Hosoda (E-mail); Michael Baumann; Raina
Cc: Victor L
Subject: Re: Berry v. Hex. - Berry FCS

Mr. Hogan:

When I finally received your letter I took immediate action to investigate. Perhaps if you had addressed the letter to me directly I could have responded more quickly. In any event, the electronic version my e-mail (5/12/03 7:39 am) references had been sent to Chicago storage. We have located it and pulled it back, and you will have it as soon as possible. I deny that anything was "concealed" or that we are or were obligated to turn this over to you, but to avoid an unnecessary fight in front of the judge we will do so as a courtesy. Dr. Walker has never before seen that particular electronic version in any event.

As for the Guidance issues, you personally supervised the process of copying what Dr. Walker had received and were satisfied with the process, as confirmed by my e-mail of January 30, 2006. We did this specifically to avoid the very position you are now taking in the event there existed further discrepancies. If you believe there is still a problem, it is not Dr. Walker's problem. Moreover, it is my belief that continued evaluation by Guidance will show your concerns about the few remaining dg files amount to nothing of any substance.

--Damian Capozzola

----- Original Message -----

From: "Timothy J. Hogan" [tjh@loio.com]
Sent: 02/06/2006 08:22 PM
To: "Brenda Sakamoto" <bls@ksglaw.com>; "Damian Capozzola \ (E-mail\)" <dcaپozzola@kirkland.com>; "Eric Liebeler \ (E-mail\)" <eliebeler@kirkland.com>; "Lex Smith" <lrs@ksglaw.com>; "Lex Smith \ (E-mail\)" <lex@gte.net>; "Lyle Hosoda \ (E-mail\)" <lsh@hosodalaw.com>; "Lyle Hosoda \ (E-mail\)" <lshosoda@hotmail.com>; "Michael Baumann" <mbaumann@kirkland.com>; "Raina Mead" <rpbm@hosodalaw.com>
Subject: Berry v. Hex. - Berry FCS

Dear Counsel:

So we are clear, it is our position that we have not received all the materials shared with Walker. Tomorrow is the deadline. The "DG" databases that were the subject of Mr. Limongelli's email and the copies of the Berry system taken by Mr. Capozzola and shared with Walker are outstanding. We intend to seek Walker's disqualification unless we have them by tomorrow or agree otherwise.

As to Mr. Capozzola's ill-advised actions in May 2003, they will be addressed in due course. Needless to say, he's on our witness list.

I've attached my letter to Mr. Liebeler addressing Mr. Capozzola's conduct in May 2003 that was apparently done on behalf of both Fleming and its lenders and concealed until we discovered it in the Guidance materials that were also previously withheld.

Tim Hogan

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-----Original Message-----

From: Timothy J. Hogan
Sent: Friday, February 03, 2006 12:02 PM
To: eliebeler@kirkland.com
Subject: Berry v. Hex.

Attached is a copy of a letter sent today via fax.

Tim Hogan

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